

BANKING DIVISION[187]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 535B.14, the Banking Division of the Department of Commerce hereby gives Notice of Intended Action to amend Chapter 18, "Mortgage Bankers and Mortgage Brokers," Iowa Administrative Code.

The proposed amendments update the rules in Chapter 18 and strike all administrative rule requirements relating to individual registration of mortgage loan originators. Individual registrants will be licensed under a new statute and chapter of administrative rules. These amendments implement 2009 Iowa Acts, Senate File 355, which was mandated by the federal S.A.F.E. Mortgage Licensing Act of 2008.

Interested persons may make written comments on the proposed amendments on or before September 15, 2009. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

These amendments are intended to implement Iowa Code chapter 535B as amended by 2009 Iowa Acts, Senate File 355.

The following amendments are proposed.

ITEM 1. Rescind the definitions of "Individual registrant" and "Individual registration" in rule **187—18.1(17A,535B)**.

ITEM 2. Amend rule **187—18.1(17A,535B)**, definition of "Mortgage application," as follows:

"Mortgage application" means: ~~an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. A completed application has all the information that the creditor regularly obtains and considers in evaluating an application for the amount and type of credit requested.~~

1. Any communication, regardless of form, from a licensee to a borrower requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a licensee for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

ITEM 3. Adopt the following new definition of "Mortgage loan originator" in rule **187—18.1(17A,535B)**:

"Mortgage loan originator" means a natural person who is licensed under 2009 Iowa Acts, Senate File 355, and 187—Chapter 19.

ITEM 4. Amend rule 187—18.2(17A,535B) as follows:

187—18.2(17A,535B) Application for license.

18.2(1) Application for a license to operate as a mortgage banker or mortgage broker shall be ~~on forms provided by the administrator~~ submitted to the administrator through the NMLS&R, and all requested information shall be provided on or with the application form. The administrator may

consider an application or registration withdrawn if it does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

18.2(2) The license application shall be accompanied by a fee of \$500 plus \$40 per additional branch location. The \$500 fee is not subject to refund. The applicant shall also pay any additional fees required by the NMLS&R including but not limited to the following: system processing fees, background check fees, and credit background check fees.

18.2(3) No change.

18.2(4) The administrator shall approve or deny a license application in accordance with the provisions of Iowa Code section 535B.5. A person shall not be eligible for licensing unless all ~~individual registrants~~ mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the ~~registration and background checks required by Iowa Code section 535B.4A~~ licensing requirements of 2009 Iowa Acts, Senate File 355.

18.2(5) An applicant must file with the administrator a bond complying with the provisions of Iowa Code section 535B.9. The bond amount required to be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
<u>\$0 – \$100,000,000</u>	<u>\$100,000</u>
<u>Over \$100,000,000</u>	<u>\$150,000</u>

~~18.2(5)~~ **18.2(6)** Licenses expire on the next December 31 after issuance. However, licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2008, would not expire until December 31, 2009.

ITEM 5. Rescind and reserve rules **187—18.4(17A,535B)** to **187—18.6(17A,535B)**.

ITEM 6. Amend rule 187—18.7(17A,535B) as follows:

187—18.7(17A,535B) Notice of significant events. A licensee ~~or individual registrant~~ shall notify the administrator immediately and in writing within ~~three~~ five business days of the occurrence of any of the following events.

18.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

18.7(2) A prosecuting authority files criminal charges against the licensee, ~~the individual registrant~~ or any of a licensee's officers, directors, principal stockholders, or affiliates.

18.7(3) Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee, ~~individual registrant~~, or any of the licensee's officers, directors, principal stockholders, or affiliates.

18.7(4) The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee, ~~individual registrant~~, or any of the licensee's officers, directors, principal stockholders, mortgage loan originators, employees, or affiliates.

18.7(5) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's ~~or individual registrant's~~ status as an approved seller or seller/servicer.

ITEM 7. Amend rule 187—18.8(17A,535B) as follows:

187—18.8(17A,535B) Changes in the licensee's business; fees.

18.8(1) No licensee ~~or individual registrant~~ shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B under any name other than that stated on the license ~~or individual registration certificate~~.

~~**18.8(2)**~~ A licensee shall notify the administrator of a change of name of the business in writing within ten days of the change. A filing fee of \$25 shall accompany a notice of change of name, in addition to all other information required by the administrator.

~~**18.8(3)**~~ An individual registrant shall notify the administrator in writing within ten days of a change in the individual registrant's name.

~~**18.8(4)**~~ **18.8(2)** A licensee shall notify the administrator in writing of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

~~**18.8(5)**~~ **18.8(3)** A licensee shall maintain on file with the administrator, through the NMLS&R, a list of all ~~individual registrants~~ mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay ~~a change in sponsorship fee of \$30~~ any fees assessed by the NMLS&R to add an individual registrant a mortgage loan originator to the licensee's list in the NMLS&R.

~~**18.8(6)**~~ **18.8(4)** When ~~an individual registrant~~ a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a licensee, the licensee shall notify the administrator, through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the ~~individual registrant's mortgage loan originator's~~ employment, contract, or agency.

~~**18.8(7)**~~ **18.8(5)** A licensee shall notify the administrator in writing of the addition of any ~~individual registrant~~ mortgage loan originator, owner, officer, partner, or director within five business days of addition.

~~**18.8(8)**~~ **18.8(6)** Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee ~~or individual registrant~~ to disciplinary action.

18.8(7) NMLS&R system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

ITEM 8. Rescind and reserve rules **187—18.10(17A,535B)** to **187—18.15(17A,535B)**.

ITEM 9. Adopt the following new paragraph **18.16(1)“d”**:

d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring this requirement is met.

ITEM 10. Adopt the following new subrule 18.16(10):

18.16(10) *Disposal of records.* If the licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1)“a.” The owners and directors of licensees and former licensees are responsible for ensuring this requirement is met.

ITEM 11. Amend rule 187—18.17(17A,535B) as follows:

187—18.17(17A,535B) Annual report. On or before ~~April 15~~ March 31 each year, a licensee shall file with the administrator an annual report for the preceding calendar year on forms prescribed by the administrator. For every day after ~~April 15~~ March 31 that the report is not received, the administrator may assess late fees of \$10 per day.

ITEM 12. Amend rule 187—18.18(17A,535B) as follows:

187—18.18(17A,535B) Advertising and representations to potential borrowers.

18.18(1) Any advertisement of mortgage loans which are offered by or through a licensee ~~or individual registrant~~ shall conform to the following requirements:

a. to *c.* No change.

18.18(2) A licensee ~~or individual registrant~~ receiving a verbal or written inquiry about the licensee's ~~or individual registrant's~~ services shall respond accurately to any questions about the scope and nature of such services and any costs.

ITEM 13. Amend rule 187—18.19(17A,535B) as follows:

187—18.19(17A,535B) Complaints and investigations.

18.19(1) The administrator may, at any time and as often as the administrator deems necessary, investigate a business and examine the books, accounts, records, and files used by a licensee ~~or individual registrant~~.

18.19(2) The administrator may investigate complaints or alleged violations about any licensee ~~or individual registrant~~.

18.19(3) The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee business affiliate, or other governmental agency.

b. Notice to the administrator from any source that the licensee ~~or individual registrant~~ has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the administrator from any source that the licensee ~~or individual registrant~~ has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction.

ITEM 14. Amend rule 187—18.20(17A,535B) as follows:

187—18.20(17A,535B) Disciplinary action.

18.20(1) No change.

18.20(2) Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in Iowa Code section 535B.7 when the administrator finds any of the following:

a. The licensee ~~or individual registrant~~ has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of mortgage banking or mortgage brokering, including but not limited to Iowa Code chapters 535 and 535A.

b. A fact or condition exists which, ~~if it had it~~ existed at the time of the original application for the license ~~or individual registration~~, would have warranted the administrator to refuse ~~originally~~ to issue the original license ~~or individual registration~~.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee ~~or individual registrant~~ has violated an order of the administrator.

e. The licensee ~~or individual registrant~~ fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's ~~or individual registrant's~~ last-known address on file with the administrator.

f. The licensee ~~or individual registrant~~ has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

g. The licensee ~~or individual registrant~~ continues to operate as a mortgage banker or mortgage broker without an active and current license ~~or individual registration~~.

~~h. The individual registrant continues to act as a mortgage banker or mortgage broker without first satisfying the required continuing education, absent an express waiver granted by the administrator~~
Reserved.

~~i. The individual registrant has submitted a false report of continuing education~~ Reserved.

~~j. The licensee or individual registrant fails to notify the administrator within three~~ five days of the occurrence of one of the significant events set forth in rule ~~187—~~18.7(17A,535B).

~~k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's or the individual registrant's license, registration, or authorization to act as a mortgage banker or mortgage broker under the other state's or jurisdiction's law.~~

~~l. The licensee or individual registrant fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.~~

18.20(3) A licensee ~~or individual registrant~~ may surrender a license ~~or individual registration~~ by delivering to the administrator a written notice of surrender.

18.20(4) No change.

ITEM 15. Rescind and reserve rules ~~187—18.21(252J)~~ to ~~187—18.23(82GA,SF2428)~~.